



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120718253-2644-02]

RIN 0648-BC30

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Snapper-Grouper Fishery off the Southern Atlantic States;  
Transferability of Black Sea Bass Pot Endorsements

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a revision of a disapproved action from Amendment 18A (the Resubmittal) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule allows black sea bass pot endorsements to be transferred under specific conditions. The intent of this rule is to implement the transferability action originally submitted in Amendment 18A, as clarified in the Resubmittal.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 18A and the Resubmittal may be obtained from the Southeast Regional Office Web site at

<http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

Amendment 18A includes an Environmental Impact Statement (EIS), a Regulatory Flexibility Act Analysis (RFA), a Regulatory Impact Review, and a Fishery Impact Statement. The Resubmittal includes a Regulatory Impact Review and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, 727-824-5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 22, 2012, NMFS published a notice of availability for the Resubmittal and requested public comments (77 FR 50672). On September 10, 2012, NMFS published a proposed rule and requested public comments (77 FR 55448). The rationale for the actions in this final rule can be found in the proposed rule, Amendment 18A, and the Resubmittal, and are not repeated

here. The Resubmittal was approved by the Secretary on November 20, 2012.

This rule allows transfer of a black sea bass pot endorsement to an individual or entity that holds or simultaneously obtains a valid South Atlantic Unlimited Snapper-Grouper Permit. In order to be transferred, a black sea bass pot endorsement must be valid or renewable. Black sea bass pot endorsements may be transferred independently from the South Atlantic Unlimited Snapper-Grouper Permit with which it is associated. Landings history will not be transferred with the endorsement. NMFS will attribute black sea bass landings to the associated South Atlantic Unlimited Snapper-Grouper Permit regardless of whether the landings occurred before or after the endorsement was issued. Black sea bass pot endorsements will not be renewed automatically with the South Atlantic Snapper-Grouper Unlimited Permit with which it is associated. The endorsement must be renewed separately from the permit on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ).

This rule also revises codified text in § 622.40, regarding issuance of the identification tags for black sea bass pots. Endorsement holders order identification tags through NMFS and a supplier issues the identification tags. Endorsement holders

must apply for new tags each permit year at the same time they renew their permit and endorsement. Finally, this rule removes and reserves paragraph (a)(2) in § 622.43, thereby removing obsolete quota closure provisions for South Atlantic octocorals.

#### Comments and Responses

NMFS received four comments on the Resubmittal and the proposed rule, from three snapper-grouper fishery participants. One commenter opposed allowing the transfer of black sea bass pot endorsements and two commenters supported the action.

Comment 1: One commenter preferred that black sea bass pot endorsements retire with fishermen, or that black sea bass pots be phased out by not allowing black sea bass pot endorsements to be transferred, which could slowly shift the entire commercial sector to a strictly hook-and-line fishery.

Response: The Council considered not allowing black sea bass pot endorsements to be transferred, which would have allowed the endorsement to retire with the fisherman. However, the Council chose to allow black sea bass pot endorsements to be transferred in order to maintain a consistent level of participation in the black sea bass pot segment of the snapper-grouper fishery and promote the harvest of black sea bass at optimum yield.

Comment 2: Two commenters suggested allowing fishermen who did not qualify for an endorsement to reenter the black sea bass pot segment of the snapper-grouper fishery as the quota (ACL) increases.

Response: This issue is outside the scope of this rulemaking, which implements a transferability provision for black sea bass pot endorsements. The Council did not consider and this rule does not address allowing increased participation in the black sea bass pot segment of the snapper-grouper fishery.

Comment 3: One commenter recommended removing the black sea bass size limits, or reverting the size limit back to 8 inches (20.3 cm) in order to reduce regulatory discards and give poor people access to lower priced small black sea bass while allowing fishermen to harvest more of the ACL.

Response: The Council considered the issue of minimum size limits for black sea bass in Amendment 18A; however, minimum size limits were not considered in the Resubmittal, and are outside the scope of this rulemaking.

Comment 4: Two commenters supported allowing black sea bass pot endorsements to be transferred.

Response: NMFS agrees. Allowing black sea bass pot endorsements to be transferred will maintain a consistent level

of participation in the black sea bass pot segment of the snapper-grouper fishery and promote the harvest of black sea bass at optimum yield.

#### Changes from the Proposed Rule

The proposed rule made editorial changes to the first sentence in the codified text at 50 CFR 622.4(a)(2)(xv). After further consideration, NMFS has determined that these changes are unnecessary. The codified text at § 622.4(a)(2)(xv), which established the South Atlantic black sea bass pot endorsement, should remain consistent with the codified text at 50 CFR § 622.4(a)(2)(xiv), which established the Eastern Gulf reef fish bottom longline endorsement. Thus, the proposed changes to the first sentence of § 622.4(a)(2)(xv) will not be implemented in the final rule.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule are necessary for the conservation and management of the snapper-grouper fishery in the South Atlantic and that they are consistent with the FMP, the Resubmittal, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments or other new information concerning this certification. As a result, no Final Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 3, 2012

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.4, the introductory text of paragraph (a)(2)(xv) is revised, paragraph (a)(2)(xv)(D) is added, and the first sentence in paragraph (g)(1) is revised to read as follows:

§ 622.4 Permits and fees.

(a) \* \* \*

(2) \* \* \*

(xv) South Atlantic black sea bass pot endorsement. For a person aboard a vessel, for which a valid commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a valid South Atlantic black sea bass pot endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for South Atlantic snapper-grouper unlimited or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of



the endorsement within 1 year after the endorsement's expiration date.

\* \* \* \* \*

(D) Transferability. A valid or renewable black sea bass pot endorsement may be transferred between any two entities that hold, or simultaneously obtain, a valid South Atlantic snapper-grouper unlimited permit. Endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of

this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement, and in § 622.4(a)(2)(xv)(D) for a South Atlantic black sea bass pot endorsement. \* \* \*

\* \* \* \* \*

3. In § 622.40, paragraph (d)(1)(i)(D) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea

bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag attached. Endorsement holders must apply for new tags each permit year through NMFS to replace the tags from the previous year.

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§ 622.43 [Amended]

4. In § 622.43, paragraph (a)(2) is removed and reserved.

[FR Doc. 2012-29625 Filed 12/06/2012 at 8:45 am; Publication

Date: 12/07/2012]